Supreme Court, U.S.
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No. 90-1962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

PYRAMID SECURITIES LIMITED,

Petitioner,

v.

IB RESOLUTION, INC.,

Respondent.

On Petition for Writ of Certiorari to The United States Court of Appeals For the District of Columbia Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

No question is presented by this case that would merit granting the writ of certiorari. Indeed, the only question in fact presented by Petitioner is whether this Court should review the determination of the United States Court of Appeals for the District of Columbia Circuit that the District Court properly granted summary judgment to Respondent. Both courts determined that a jury could not reasonably have found for Petitioner and properly applied District of Columbia law and this Court's precedents to this case.

STATEMENT REQUIRED BY RULE 29.1

Respondent IB Resolution, Inc. is a wholly-owned subsidiary of USLICO Corporation, a publicly-owned corporation traded on the New York Stock Exchange. USLICO has four downstream subsidiaries with a limited number of publicly-held shares: Hawkeye-Security Insurance Company, The International Trust Company of Liberia, The Insurance Company of Africa, and Atlantic Data Corporation.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent IB Resolution, Inc. ("IBR")[1] respectfully requests that this Court deny the Petition for Writ of Certiorari of Pyramid Securities Limited ("Pyramid") seeking to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

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[1] IBR is the successor of International Bank, the original defendant in this action. IBR was substituted as a party after International Bank was merged into IBR. (App. 2a) Abbreviations used herein are "App." for the appendix attached to the Petition, "Pet." for the Petition and "R. App." for the appendix attached hereto.

STATEMENT

The Statement contained in the Petition filed by Pyramid mischaracterizes the facts of record as well as the opinion rendered by the United States Court of Appeals for the District of Columbia Circuit (Williams, Buckley & Thomas, JJ.). Further, the Petition is almost entirely without citations to the record, preventing both this Court and IBR from readily checking the factual claims against the record.[2]

As required by Sup. Ct. R. 15.1, IBR will attempt to correct Pyramid's principal misstatements of the record. One of the most egregious is the suggestion that "WIBT directly purchased and sold stock on behalf of Pyramid through Hutton in West Palm Beach, Florida."[3] (Pet. 8) This statement is clearly meant to imply to the Court that WIBT made decisions to purchase and sell stock through Hutton. In fact, as Pyramid notes in the following paragraph, WIBT was a clearinghouse (*id.*; App. 2a) to pay for stocks. There is no evidence that anyone but Pyramid and/or E.F. Hutton & Company made decisions concerning the purchase of specific stocks.

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[2] Pyramid also repeatedly refers in its Petition to evidence that it did not present below. For example, at page 5 it refers to "evidence that such misconduct would project into the future." As the circuit court found (App. 7a, 10a), no such evidence was produced below. The circuit court carefully looked for alleged acts of racketeering after the alleged churning episode, and found none. (App. 7a-10a)

[3] WIBT (Washington International Bank & Trust Co.), a Cayman Islands bank, was a subsidiary of International Bank. WIBT was not sued in the district court; instead, International Bank was sued for the acts of its subsidiary on an alter ego theory.

Even more egregious is the statement in that same paragraph that "[s]tock trading could not take place without the bank's participation." (Pet. 8) This falsehood is the basis for one of Pyramid's key arguments. (Pet. 17) In fact, Pyramid had an account at Hutton which allowed Hutton to make trades on Pyramid's behalf. (R. App. 19a, ¶ 25) While *procedures* called for WIBT to pay for the stock, Hutton was fully capable of making (and did make) trades without the Bank's participation. Pyramid produced *no* evidence below that WIBT knew of any of the allegedly unauthorized trades before the fact. The panel below noted: "there is no claim that Pearson's churning presented any occasion for the sort of services [WIBT] formerly provided." (App. 5a, footnote omitted.) The trades were recorded in a bank ledger; nothing more has been demonstrated by Pyramid. WIBT did not profit from the trades and no evidence of any motive for the so-called conspiracy was produced. (App. 5a, 10a-11a)

On page 9 of the Petition, Pyramid notes that WIBT wrote to Hutton at Pyramid's behest to request trading statements for the second half of 1981. Pyramid fails to note that there is no evidence that WIBT had previously received trading statements. (App. 7a)

Pyramid does not disclose that it previously sued WIBT and International Bank, IBR's predecessor, in the United States District Court for the Southern District of Florida. That case was dismissed by Judge Marcus. A copy of Judge Marcus' opinion is reproduced in the appendix hereto at R. App. 1a.[4]

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[4] Judge Marcus, calling the Southern District of Florida "an entirely inappropriate forum," strongly suggested to Pyramid

As evidenced by the conflicting affidavits of Edward Attridge, Pyramid's sole owner and President, Pyramid has a history in this litigation and previous litigation of saying whatever it perceives will advance its case at the time. (App. 16a-17a, 19a) Pyramid has not changed its approach in this Court. In its Petition, Pyramid denigrates the importance of the so-called "secret ledger" which Pyramid's president, Edward Attridge, emphatically swore in the Florida litigation that he received in 1984. However, in paragraph 32 of the Complaint in *this* case, Pyramid stated:

> "[t]he confidential securities mail register maintained by WIB, *establishes* that WIB knowingly allowed the continuation of improper transactions involving Pyramid's account. WIB willfully and wantonly concealed from Pyramid the existence of the confidential securities mail register for a substantial period of time, thereby precluding Pyramid from obtaining knowledge of WIB's involvement in Hutton's improper activity with respect to Pyramid's account." (R. App. 20a; emphasis added.)

Likewise, in its pleadings in Florida, Pyramid stressed the importance of the securities register. (App. 16a) Pyramid now complains because the Court of Appeals accepted Pyramid's prior representations that the securities ledger was important but used those same

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that it bring suit, if it wished to do so, in the Cayman Islands where the case had the greatest factual and legal nexus. (R. App. 13a) Pyramid refused to do so and instead sought out the District of Columbia as a forum.

representations against Pyramid in dismissing its state law claims.

REASONS FOR DENYING THE WRIT

There are no "special and important reasons" for granting the Writ as required by Sup. Ct. R. 10.

1. There is no conflict among the circuit courts of appeals.

There is no conflict, nor is there even a suggestion of a conflict, between the opinion below and that of any other circuit court of appeals. Pyramid attempts to suggest that there is a conflict within the District of Columbia Circuit with respect to the "pattern" element of RICO. However, Rule 10.1(a) makes no reference to a conflict within a circuit; it speaks only to a conflict with another circuit.

In any event, there is no conflict within the District of Columbia Circuit. The *Yellow Bus* decision cited by Pyramid was reheard and decided *en banc*. The decision on rehearing *en banc* specifically declined to address the "pattern" question, a fact conveniently omitted from Pyramid's discussion of the panel opinion in *Yellow Bus*.[5] *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local 639*, 913 F.2d 948, 956 n.5 (D.C. Cir. 1990), *cert. denied*, ___ U.S. ___, 59 U.S.L.W. 3838 (1991).

2. There are no important questions for this Court to resolve.

Neither are there important questions of federal law not settled by this Court raised in this case nor

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[5] Although noted in the Table of Authorities, the citation to the *en banc* opinion is absent from the citations of *Yellow Bus* in the text of the Petition. (Pet. 5, 25)

is there any conflict with this Court's precedent. *See* S. Ct. R. 10.1(c). Indeed, the circuit court took great pains to conform its decision in this case to the decisions of this Court. The D.C. Circuit properly applied the standards set forth in *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), in evaluating Pyramid's attempt to satisfy the "pattern" requirement under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.* It concluded that Pyramid could not meet this test.

Judge Williams' opinion sets forth the standards used by the panel and is careful to reconcile the panel's decision with this Court's 1986 summary judgment cases, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The circuit court assumed that WIBT had engaged in "some acts of racketeering" while expressing its skepticism that in fact such an assumption would be correct. (App. 5a)[6] What the circuit court refused to do was to find that Pyramid had produced sufficient evidence such that a reasonable jury could find that a "pattern" of racketeering in fact had taken place.

Pyramid disagrees with how the D.C. Circuit applied the summary judgment cases decided by this Court and suggests that they are limited to defamation and antitrust cases. However, this Court has

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[6] As did the Court of Appeals (App. 4a), IBR assumes for purposes of argument that the facts must be viewed to determine whether "a jury could reasonably have found for Pyramid". This assumption is, of course, no concession that Pyramid's many false charges against WIBT and its president have any validity.

cited *Anderson* in other contexts, *e.g.*, *McDermott Int'l, Inc. v. Wilander*, ___ U.S. ___, 111 S. Ct. 807 (1991) (Jones Act case) and *Lujan v. National Wildlife Fed'n*, ___ U.S. ___, 110 S. Ct. 3177 (1990) (APA/NEPA case). *Anderson* and *Matsushita* dictate that rationality be used in evaluating summary judgment motions; rationality is needed in the complex area of RICO jurisprudence just as much as it is needed in antitrust and defamation cases.

3. The Court of Appeals properly applied Grunewald.

Pyramid also argues that the Court of Appeals' opinion founders on a "misplaced reliance on this Court's decision in *Grunewald v. United States*, 353 U.S. 391 (1957)." (Pet. 20) Pyramid's argument, however, reveals Pyramid's own misunderstanding of the "vital distinction" drawn by this Court in *Grunewald* between "acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." *Grunewald*, 353 U.S. at 405 (emphasis in original). This Court concluded that the former may indeed extend the duration of a conspiracy, but that the latter may not. *Grunewald*, 353 U.S. at 405-06.

Pyramid states that the Court of Appeals "ignored" the "fact" that "the acts of concealment furthered the main criminal objective: to ensure that the racketeers could preserve future opportunities to defraud." (Pet. 21) In fact, the Court of Appeals concluded, after thoroughly reviewing the evidence offered by Pyramid as to the continuity requirement of RICO, that "Pyramid has failed to support its claim that [WIBT] ever plotted to participate in any crim-

inal activity other than the churning that ended in November 1981 (assuming it did even that)." (App. 10a) Thus, the Court of Appeals found that the most the record reasonably could support was a finding that the "main criminal objective" of the alleged conspiracy was a narrowly circumscribed one of conducting churning over the three-month period of Mr. Attridge's honeymoon, and nothing more. Accordingly, the alleged acts of concealment, as the Court of Appeals concluded, were nothing more than after-the-fact acts to hide any alleged knowledge of or participation by WIBT in the three-month period of churning, and *not* in furtherance of any conspiracy to conduct future churning.

Moreover, the Court of Appeals carefully considered and rejected Pyramid's claim that certain alleged acts of concealment involving (so Pyramid claimed) mail fraud and obstruction of justice were RICO predicate acts. (App. 7a-10a) Because these alleged acts of concealment were not RICO predicate acts, they could not extend the duration of the alleged RICO conspiracy. (App. 7a)

Pyramid mischaracterizes *Grunewald* as involving "passive" acts of concealment. In fact, *Grunewald* involved the destruction of documents, persuading an accountant to perjure himself before a grand jury, attempting to persuade a secretary not to talk to the grand jury, and telling the taxpayers involved "to keep quiet," *Grunewald*, 353 U.S. at 403, hardly "passive" conduct.

United States v. Perholtz, 842 F.2d 343 (D.C. Cir.) (per curiam), *cert. denied*, 488 U.S. 821 (1988), is cited by Pyramid as "far more applicable to the present case than *Grunewald*." (Pet. 22) *Perholtz* involved the

application of the co-conspirator hearsay exemption to a document called the "script," which was a summary written by the lead conspirator for one of the conspiracy participants who acted as a funnel for payments which he then paid as kickbacks to government employees involved in the conspiracy. *Perholtz*, 842 F.2d at 351. The lead conspirator wrote the "script" after the government issued a subpoena for the records of the corporation headed by the "funnel" conspirator. The "script" told the "funnel" conspirator what he was supposed to have done under the various agreements he had signed.

The D.C. Circuit declared that "[i]n order to admit co-conspirator statements, the trial judge must determine that a conspiracy existed, that the co-conspirator and the defendant against whom the statement is offered were members of the conspiracy, and that the statements were made in furtherance of the conspiracy." *Perholtz*, 842 F.2d at 356. In this context, the court applied the so-called "standards" cited by Pyramid that "acts of concealment were 'parts of continuing activity that was essential to and in furtherance of the survival of an ongoing operation.' " (Pet. 22) The court specifically noted that at the time the "script" was prepared, one of the kickback schemes was ongoing, and the parties were still waiting for payments with respect to two other schemes. The court concluded that:

> The main purpose of the scheme, to collect government funds from improperly awarded contracts and then distribute the proceeds among the conspirators, had not been fully achieved at the time of the creation of the script. In short, Perholtz's attempt "to influ-

> ence witnesses were not acts of concealment related only to a past objective. They were parts of continuing activity that was essential to and therefore in furtherance of the survival of an ongoing operation."

Perholtz, 842 F.2d at 357 (*quoting United States v. Del Valle*, 587 F.2d 699, 704 (5th Cir.), *cert. denied*, 442 U.S. 909 (1979)).

This "standard" cited by Pyramid is completely in harmony with *Grunewald*. Indeed, the court in *Perholtz* cites to *Grunewald* as its source for the proposition that " 'acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy' may be considered to be in furtherance of the conspiracy within the meaning of the co-conspirator hearsay exemption." *Perholtz*, 842 F.2d at 356-57 (emphasis in original). For Pyramid to state that *Perholtz* is "far more applicable to the present case than *Grunewald*" with respect to a legal standard is nonsensical; *Grunewald* and *Perholtz* both stand for the same "standard." The outcomes of each case were different because the facts at issue in each case were different. The legal standard applied in this case by the Court of Appeals, citing to *Grunewald*, was thus correct.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

/s/ Sheila J. Carpenter

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Dated: July 22, 1991

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-0473-CIV-MARCUS

PYRAMID SECURITIES LIMITED,

Plaintiff,

vs.

WASHINGTON INTERNATIONAL BANK AND TRUST LIMITED, et al.,

Defendants.

FILED by _____ D.C.

NOV 10 1987

ROBERT M. MARCH
CLERK U.S. DISTRICT CT.
S.D. OF FLA. MIAMI

ORDER OF DISMISSAL

THIS CAUSE came before the Court on the Defendants' Motions to Dismiss. For reaons [sic] detailed at some length below, we agree and accordingly we dismiss this Complaint.

Plaintiff, Pyramid Securities Limited ("Pyramid"), a corporation organized under the laws of the British Virgin Islands with its principal place of business in the Cayman Islands, brought this action claiming a violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c) & (d), breach of contract, breach of fiduciary obligations and negligence.

On or about June 15, 1981, Plaintiff entered into an agreement with E.F. Hutton & Co. ("Hutton") whereby

Hutton agreed to act as a securities broker for the Plaintiff. It is alleged that between September 1981 and April 1982, Hutton, through its agent Linda Pearson, intentionally and fraudulently converted Plaintiff's securities account through unauthorized trading and "churning," thereby reducing the value of the account and generating excessive commissions. Suit was brought against Hutton and Pearson. That case was ultimately settled.

Plaintiff brought this case against six defendants. The defendants can be divided into two distinct groups. The "Bank Defendants" are: Washington International Bank and Trust Limited ("WIB"), organized and licensed under the laws of the Cayman Islands; International Bank of Washington Group ("IB"), an Arizona corporation with its principal offices located in the District of Columbia; and Nicholas J. Duggan, the President of Washington International Bank and Trust Ltd., and an Irish citizen. Counts I, II and III of the Complaint are directed only at the Bank Defendants.

The "Law Firm Defendants" are: Anderson, Moss, Russo and Gievers, P.A., a professional services corporation that maintains its principal office in Florida; Don Russo, Esq., and Karen A. Gievers, who are attorneys and principals in Anderson, Moss, Russo and Gievers, P.A. They are both Florida residents. The Law Firm Defendants are named only in Court IV of the Complaint.

The Complaint states that during the relevant period, Plaintiff "owned and traded stocks and other investment securities for its own account." [Complaint ¶ 12]. WIB "administered Pyramid's accounts with various brokerage houses, served as Pyramid's agent and performed certain bookkeeping and account functions for Pyramid, for which it received substantial commissions." [*Id.*] Neither Duggan nor IB had a contractual relationship with Plaintiff. However, Pyramid alleges that WIB is wholly owned by IB or one of its subsidiaries. [Complaint ¶ 7]. The Complaint fur-

ther alleges that the Bank Defendants "did knowingly and intentionally combine, conspire, confederate and agree together with each other to conduct the affairs of E.F. Hutton & Co., Inc. . . . through a pattern of racketeering activities . . . in violation of 18 U.S.C. §§1962(c) & (d)." [Complaint ¶17]. Specifically, Plaintiff contends that the Bank Defendants committed acts of wire and mail fraud in connection with Hutton's conversion of the Pyramid securities account, and the concealment of those activities from the Plaintiff.

Plaintiff charges in Count II and III that the activities of the Bank Defendants were a breach of the contract formed between Plaintiff and WIB, as well as a breach of the Bank Defendant's fiduciary obligation to the Plaintiff.

Count IV alleges that the Law Firm Defendants were retained by the Plaintiff in order to pursue any claims that it may have had against Hutton and Pearson. It is alleged that during their preparation for trial, the Law Firm Defendants, through their negligence, failed to "recognize, appreciate and understand the significance" [Complaint ¶ 34] of a document obtained during discovery, and failed to pursue Plaintiff's legitimate claims against the current Bank Defendants. [Complaint ¶ 35]. Plaintiff also contends that as a result of this negligence, the Law Firm Defendants counselled Pyramid to settle their claims against Hutton and Pearson and that "Pyramid was never made whole from the injuries it sustained." [Complaint ¶ 36].

I.

The Law Firm Defendants have moved to dismiss the case against them on the grounds that this Court lacks subject matter jurisdiction. Plaintiff contends that the jurisdictional basis is founded either in diversity, 28 U.S.C. §1332, or pursuant to the exercise of pendent jurisdiction over the parties based on a related federal claim brought under RICO. We are unpersuaded by either contention.

Federal diversity jurisdiction is found between "citizens of a State, and foreign states or citizens and subjects thereof; and citizens of different States and in which foreign states or citizens or subjects thereof are additional parties." 28 U.S.C. §1332(a)(2), (3) (1982). However, "[w]hen there are alien parties on both sides of the controversy jurisdiction will be found lacking even though they are citizens of different foreign countries, or one of them is a resident or domiciliary of the United States." 1 Moore's Federal Practice ¶ 0.75[1.-2] at 709.6. Moreover, the mere inclusion of a citizen of a state will not create diversity jurisdiction when "aliens are the principal adverse parties." 13B Wright, Miller & Cooper, *Federal Practice and Procedure*, §3604 at 389 (1984) *See Ed & Fred, Inc. v. Puritan Marine Insurance Underwriters Corp.*, 506 F.2d 757, 758 (5th Cir. 1975). Here, principal parties, Pyramid and WIB, are both corporations organized under the law of the Cayman Islands. Therefore, complete diversity between these parties is lacking and subject matter jurisdiction may not be based on 28 U.S.C. §1332.

Plaintiff maintains, as an alternative ground, that jurisdiction exists over the Law Firm Defendants based on the doctrine of pendent *party* jurisdiction. The argument is that since Plaintiff has pled a cause of action under RICO, federal question jurisdiction, 28 U.S.C. §1331, exists with regard to the Bank Defendants. The Plaintiff then contends that since the claim against the Law Firm Defendants arises out of the same nucleus of operative facts, *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966), the Court should exercise its discretion and assert jurisdiction over these Defendants as to the state law claim because of its central connection with the federal cause of action.

The Law Firm Defendants have interposed two objections: first, that this Court is without the power to exercise pendent jurisdiction over them; and second, that even if we have the power, theoretically, to entertain the lawsuit,

we should decline to exercise it. We address both of these issues in turn.

Under *Gibbs*, before a federal court has the power under Article III to exercise pendent jurisdiction over state law claims, three requirements must be met. First, there must exist a substantial federal claim. Further, "[t]he state and federal claims must derive from a common nucleus of operative fact," *id.* at 725, and that therefore they would "ordinarily be expected to [be tried] . . . in one judicial proceeding." *Id.* In *Aldinger v. Howard*, 427 U.S. 1 (1976), the Court addressed the question of pendent *party* jurisdiction and found that in order to have the power to exercise such jurisdiction all of the *Gibbs* factors must be present and the "court must satisfy itself not only that Art[icle] III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." *Id.* at 18.

The Eleventh Circuit has recognized that in *Gibbs* and *Aldinger* "the Supreme Court has significantly circumscribed the power of federal courts to exercise pendent party jurisdiction." *Lykins v. Pointer, Inc.*, 725 F.2d 645, 647 (11th Cir. 1984). We have real and substantial doubts about our power to hear the claim against the Law Firm Defendants. However, even if that power actually exists, we hold that under the facts of this case, the claim against these defendants must be dismissed. Considerations of fairness to the litigants requires that we exercise our discretion and dismiss this pendent claim.

For the purposes of this decision, we assume without deciding that the RICO count as pled by the Plaintiff, does state a claim upon which relief may be granted, and that it presents a substantial federal question.

Under the second *Gibbs* prong, we must determine whether the state and federal claims in this action derive from a common nucleus of operative fact. While the state and federal claims may have some connection, that factual

connection is attenuated. The substance of the claim against the Law Firm Defendants is that they were negligent in handling Plaintiff's claim against Hutton and Person and failing to recognize the existance of a claim against the Bank Defendants. By stark contrast, the RICO claim alleges that the Bank Defendants willfully conspired with Hutton in its unlawful trading activity. The conspiracy allegation in only tangentially related to the claim that the Law Firm Defendants were negligent in the performance of their professional services. The Law Firm Defendants have no express or implied connection to the conspiracy charge. The claim levelled against them is in no way related to the substantive acts that form the predicate for the RICO claim. Plaintiff attempts to create a bridge between these two unrelated claims out of a single document, but fails to demonstrate that they, in fact, arise from a common nucleus. *See* 13B Wright, Miller & Cooper, *Federal Practice and Procedure* §3567.1 at 117-20. (loose factual connection may be sufficient to support pendent jurisdiction, but claims may not be totally independent). The only connection between the RICO and the negligence claim is that there may exist a common piece of evidence. That nexus is insufficient, by itself, to invoke pendent jurisdiction. *See, e.g., Benton v. Kroger Co.*, 635 F.Supp. 56, 59 (S.D. Tex. 1986).

The final consideration under *Gibbs* is whether these claims would ordinarily be expected to be tried together. It is apparent that there is some commonality between the RICO claim and the negligence claim. Plaintiff contends that the Law Firm Defendants failed to grasp the import of a document that demonstrated the Bank Defendant's complicity in Hutton's unauthorized trading of Plaintiff's account. In order to establish the negligence of the Law Firm Defendants, Plaintiff would be required to prove the existence of the document and its contents. It is assumed that this document would also be offered in proof of the conspiracy count against the Bank Defendants.

However, this common fact, standing alone, does not require these cases to be tried together. *See Roper v. Edwards*, 815 F.2d 1474, 1477 (11th Cir. 1987) (where state claims, distinct from federal claims, contained different legal theories and required different measures of proof, district court did not abuse discretion in dismissing the state claim).

Moreover, prudential considerations of fairness to the litigants also weigh heavily against trying these actions as one. The danger surely would be present that the facts necessarily adduced to prove the mail and wire fraud, and ultimately a RICO violation, will be imputed by the jury to the Law Firm Defendants who are charged solely with an unrelated negligence claim. It is likely that the question of the Law Firm Defendants' exercise of due care would be overshadowed by the allegations of criminal conduct, fraud and conspiracy levelled at the Bank Defendants. In short, the factors identified in *Gibbs* strongly suggest that we are without Article III power over the pendent party claim.

However, as the *Gibbs* considerations present difficult questions, we alternatively consider whether this Court has the statutory *power* under RICO to hear the claim against these pendent parties, and if so, whether we should exercise our discretion to reach that claim.

Recently, a court has addressed the application of RICO to the *Aldinger* consideration. *Chas. Kurz Co. v. Lombardi*, 595 F.Supp. 373 (E.D. Pa. 1984). There, the court concluded that "[n]either the jurisdiction-granting sections of RICO nor the legislative history exhibit any manifestation of express or implied congressional intent to grant pendent party jurisdiction." *Id.* at 378. Absent any legislative direction, that court found that a presumption exists against the exercise of pendent party jurisdiction in such circumstances. *Id.* at 379. *Cf. Contemporary Services Corp. v.*

Universal City Studios,Inc., 655 F.Supp. 885, 893-94 (C.D. Cal. 1987).

In the case at bar, considerations of fairness militate heavily against exercising pendent party jurisdiction. As we have noted, there is a real danger both of jury confusion and unfair prejudice. *See* 13B Wright, Miller & Cooper, *Federal Practice and Procedure* §3567.1 at 139-40 & n. 24. Further, the claims against the Law Firm Defendants are not tied to an important question of federal policy, *id.* at 1340 & n. 25, that would create a compelling reason for the federal court to entertain the state law claim. "The circumstances do not warrant upsetting the normal balance of the state/federal court relationship. The exceptional cases where [pendent party jurisdiction should be allowed] will primarily involve those situations in which the proposed pendent party is necessary or indispensable to the resolution of a valid pendent claim." *Chas. Kurz & Co.*, 595 F.Supp. at 380. Any arguably valid pendent claim here, are brought against the Bank Defendants (Counts II, III). The presence of the Law Firm Defendants is immaterial to their resolution. For the foregoing reasons, we have concluded that we should not hear the pendent party claims. *See also Kiss v. Tamarac Utilities, Inc.*, 463 F.Supp. 951, 954 (S.D. Fla. 1978). Count IV must be dismissed for lack of subject matter jurisdiction.

II.

Plaintiff has asserted that subject matter jurisdiction as to the Bank Defendants is based on diversity and federal question jurisdiction. As discussed *supra*, diversity jurisdiction does not exist in this case because the suit has been brought by an alien against alien defendants. Therefore the subject matter jurisdiction over Counts I, II and III must rest on federal question jurisdiction based on the RICO claim (Count I), and pendent claim jurisdiction over the state law counts (Counts II, III).

Bank Defendants have asserted that subject matter jurisdiction does not exist because Plaintiff has failed to state a claim under RICO, and therefore federal question jurisdiction does not exist. While substantial questions do exist regarding the adequacy of the RICO pleading, because it is evident that this Court lacks personal jurisdiction over these Defendants, again we will assume, without deciding, that the Plaintiff has stated a claim under RICO.

Personal jurisdiction over a non-resident defendant may be exercised only to the extent permitted by the long-arm statute of the forum state. *Oriental Imports and Exports v. Maduro & Curiel's Bank, N.V.*, 701 F.2d 889, 890 (11th Cir. 1983). The Florida long-arm statute provides in pertinent part:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiciton of the courts of this state for any cause of action arising from the doing of any of the following acts:
>
> (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
>
> (b) Committing a tortious act within this state.
>
> * * *
>
> (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
>
> 1. The defendant was engaged in solicitation or service activities within this state; or

> 2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use.
>
> (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
>
> (2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiciton [sic] of the courts of this state, whether or not the claim arises from that activity.

F.S.A. §48.193 (West Supp. 1987). None of the activities of the Bank Defendants fall within the provisions of this statute or the longer reach afforded by due process consideration under the Constitution.

Plaintiff contends that sufficient contacts exist between the Bank Defendants and the forum to permit the exercise of personal jurisdiction over these parties. However,

> [s]ince the defendant has no office or agency in this state, the key portions of the Florida long-arm statute require that the defendant "engage in" or "carry on" a business or business venture in the state, commit a tortious act in the state, or engage in solicitation or service activities within the state.

Oriental Imports and Exports, Inc., 701 F.2d at 891.

The initial question turns on whether the Defendants were "doing business" in the state. The resolution of this question must be approached by determining "whether the defendant[s] purposefully established 'minimum contacts' in the forum state." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (*quoting International Shoe Co. v.*

Washington, 326 U.S. 310, 316 (1945)). The Supreme Court has recently reaffirmed the proposition that "minimum contacts must have a basis in 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.' " *Asahi Metal Industry Co. v. Superior Court of California, Solono County*, 107 S.Ct. 1026, 1031 (1987) (*quoting Burger King Corp.*, 471 U.S. at 475). Even though "[i]n Florida, the long-arm statutes require more activities or contacts than are required for due process considerations," *Limardo v. Corporacion Intercontinental*, 590 F.Supp. 1109, 1111 (S.D. Fla. 1984), Plaintiff must be able to demonstrate that the Bank Defendants' contacts satisfy, at least, the minimum requirements under the Constitution in order to assert personal jurisdiction. Pyramid fails to make this showing.

Plaintiff cites four contacts with Florida by the Defendants which purportedly establish that their activity falls within the reach of the long-arm statute. First, Plaintiff alleges that Duggan and other employees of Washington International Bank & Trust Ltd., "made and received numerous mailings and wire communications both into and from the Southern District of Florida." [Complaint ¶27]. Second, Plaintiff contends that a trip was made by Duggan to Miami "to meet, interview and retain the services of a brokerage house for [the Plaintiff]," [*id.*]. Third, it is alleged that the Bank Defendants regularly and continuously traded securities for the Plaintiff and others. Finally, Plaintiff maintains that the Bank Defendants acted for it in negotiating commission rates with Hutton and establishing a relationship between Pyramid and Hutton, and that the agreement between Pyramid and WIB "contemplated that [WIB] would act for Pyramid . . . in South Florida." [*See* Plaintiff Pyramid Securities Response to "Bank Defendants" Motion to Dismiss & Motion to Strike at 15-16]. Plaintiffs also allege

that the Bank Defendants had their own trading account with Hutton.

The contacts of the Bank Defendants with this forum do not, alone or in the aggregate, establish that the Defendants have purposefully availed themselves of the benefits and privileges of Florida law. At most, Plaintiff has alleged a course of conduct whereby the Defendants have continuously *communicated* with Hutton, a Florida business. However, "[i]nterstate communication is today an almost inevitable accompaniment to doing business and cannot fairly be considered a contact justifying exercise of jurisdiction." *Sporting Goods Distributors, Inc. v. Whitney*, 498 F.Supp. 1088, 1091 (N.D. 1980) (citations omitted). Accordingly, the communication of the Bank Defendants with Hutton in Florida through the mail and wires fails to satisfy the constitutional minimum contacts requirement or the stricter "doing business" requirement under the Florida long-arm statute. *See Oriental Imports and Exports, Inc., supra* (foreign bank with correspondent relationship with Florida banks, insufficient contact to establish "doing business" under the Florida long arm statute).

Other contacts of the Bank Defendants with this forum cited by the Plaintiff, even if arguably sufficient to satisfy the "doing business" requirement, do not have the requisite connection with the events of this litigation to confer personal jurisdiction over the Bank Defendants. Duggan's trip to Miami, and his subsequent negotiations with a "brokerage firm" is not linked to the specified transactions that are the subject of this suit. Likewise, WIB's own trading account is not a sufficient contact to confer personal jurisdiction in this matter. Under the long-arm statute, the activities in Florida must generate the injury complained of in order to form a jurisdictional basis. *See Hrtica v. Armstrong World Industries*, 607 F.Supp. 16, 18 (S.D. Fla. 1984). To assert jurisdiction on this basis would mean that a negligible contact with the forum would be sufficient under the long-arm statute. Also there has been

no showing by the Plaintiff that Defendant has committed a tortious act within the state, or a tortious act outside the state causing any injury within this forum.

Finally, Pyramid does not allege that Defendant IB had *any* contact with this forum. Plaintiff apparently intends to impute the "contacts" of IB's subsidiary WIB to IB. However, in order to pierce the corporate veil under Florida law, the moving party must allege that the separate corporate forms were established for fraudulent or improper purposes. *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114 (Fla. 1984). No such allegation has been made here.

III.

We note further, in passing, that the Southern District of Florida appears to be an entirely inappropriate forum for the resolution of the conflict between the Plaintiff and the Bank Defendants. the principal parties are residents of the Cayman Islands, and many of the witnesses and items of evidence are located there. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257-58 (1981). Moreover, we may question what interest this forum has in adjudicating a dispute between nonresidents, centering on a contract made in the Cayman Islands and governed by its law. *See Asahi Metal Industry Co.*, 107 S.Ct. at 1034. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Law Firm Defendants' Motion to Dismiss is GRANTED. It is further

ORDERED AND ADJUDGED that the Bank Defendants' Motion to Dismiss is GRANTED.

DONE AND ORDERED in Miami, Florida this 9th day of November, 1987.

/s/ Stanley Marcus
STANLEY MARCUS
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Counsel of record

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 87-3541

PYRAMID SECURITIES LIMITED,
Crighton Building
Crew Road
Grand Cayman, Cayman Islands,
British West Indies,
a foreign corporation,

Plaintiff,

v.

INTERNATIONAL BANK,
1701 Pennsylvania Avenue, N.W.,
Washington, D.C. 20006,

Defendant.

SERVE: Prentice-Hall Corporation
Systems, Inc.
1025 Vermont Avenue, N.W.
Washington, D.C. 20005,

Registered Agent.

FILED

DEC 31 1987

Charles R. Richey, J.

COMPLAINT

Jurisdiction

1. Jurisdiction is founded upon diversity of citizenship and amount, and is authorized by 28 U.S.C. § 1332. This

action involves parties of diverse citizenship and the matter in controversy exceeds the sum of ten thousand dollars ($10,000.00), exclusive of interest and costs. Plaintiff is a corporation incorporated under the laws of the British Virgin Islands, and has its principal place of business in the Cayman Islands, British West Indies. Defendant is a corporation incorporated under the laws of the State of Arizona, and has its principal place of business in the District of Columbia.

2. Jurisdiction is also founded upon the existence of a federal question and amount in controversy. This action arises under the Racketeer Influenced and Corrupt Organizations Statute, 18 U.S.C. §§ 1962(c)-1962(d), and is authorized by 18 U.S.C. § 1964(c) and 28 U.S.C. § 1331.

Identification of the Parties

3. Plaintiff Pyramid Securities Limited ("Pyramid") is a corporation organized under the laws of the British Virgin Islands, and has its principal place of business in the Cayman Islands, British West Indies.

4. Defendant International Bank is an Arizona corporation, and has its principal place of business in the District of Columbia.

General Factual Allegations

5. International Bank is the parent corporation of Washington International Bank and Trust Limited ("WIB").

6. WIB is organized and licensed under the laws of the Cayman Islands to engage in banking and trust company business in the Cayman Islands. WIB is located on Grand Cayman, British West Indies.

7. During all times material hereto, International Bank has owned at least 90.5% of the capital stock of WIB. Beginning in 1983 International Bank acquired 100% of the capital stock of WIB.

8. During all times material hereto, various members of the board of directors of International Bank have simultaneously served as members of the board of directors of WIB.

9. During all times material hereto, various members of the board of directors of International Bank have frequently visited the Cayman Islands to conduct meetings with officers and directors of WIB for purposes of discussing the operations of WIB.

10. During all times material hereto, WIB has been held out to the public as a member of International Bank.

11. During all times material hereto, WIB regularly solicited banking customers through published advertising representing that WIB is a "Member of the International Bank Group, Washington, D.C."

12. During all times material hereto, WIB officers frequently represented to WIB's banking customers that WIB is a part of the International Bank.

13. During all times material hereto, individuals wishing to open accounts with WIB were frequently provided by WIB bank personnel with International Bank brochures in an effort to solicit business on behalf of WIB.

14. During all times material hereto, letterhead of WIB regularly stated that WIB is a "Member" of International Bank.

15. During all times material hereto, International Bank continually exercised considerable control over the operations of WIB.

16. During periods of time material hereto, International Bank represented to the banking authorities of the Cayman Islands, that International Bank intends to support "in any way necessary the operations" of its subsidiary WIB. International Bank has further represented to such banking authorities that it will not withdraw or change

its commitment "without prior consultation with the banking authorities of the Cayman Islands."

17. During periods of time material hereto, International Bank has guaranteed certificates of deposit at WIB.

18. During periods of time material hereto, WIB was obligated by International Bank to secure approval from International Bank before WIB could issue loans in excess of $50,000.

19. During all times material hereto, plaintiff Pyramid owned and traded stocks and other investment securities for its own account. WIB administered Pyramid's accounts with various brokerage houses, served as Pyramid's agent in investment and banking matters, and performed certain bookkeeping and accounting functions for Pyramid, for which WIB received substantial commissions.

20. During all times material hereto, Nicholas J. Duggan ("Duggan"), President and Manager of WIB, oversaw WIB's activities with respect to Pyramid's affairs, and in or about the spring of 1981, recommended that Pyramid employ the services of Linda Pearson ("Pearson") as a securities salesperson and broker.

21. At all times material hereto, Pearson was employed by E.F. Hutton & Company, Inc. ("Hutton"), and performed various brokerage services at Hutton's Palm Beach, Florida office.

22. On or about June 15, 1981 Pyramid entered into an agreement with Hutton and Pearson, wherein Pearson and Hutton served as securities brokers on behalf of Pyramid, in accordance with all applicable laws and in strict accordance with the instructions of Pyramid.

23. From approximately June 15, 1981 through approximately August 31, 1981, Pearson and Hutton performed various brokerage services on behalf of Pyramid, and in accordance with Pyramid's directives.

24. On or about August 31, 1981 Pyramid contacted Hutton, Pearson, Duggan and WIB, and directed that no further securities transactions transpire with respect to Pyramid's account.

25. From in or about September 1981 through in or about November 1981, Pearson, through her position at Hutton, wrongfully and fraudulently assumed control over the purchase and sale of securities in Pyramid's account, without notice to or knowledge of, Pyramid. Pearson, through her position with Hutton, on a continuing basis, knowingly, intentionally and fraudulently converted the property in Pyramid's account.

26. Pearson traded approximately $4.5 million in Pyramid's account during the three-month period referenced above, and her unauthorized trading and "churning" of the account reduced the value of Pyramid's account from approximately $890,000 on August 31, 1981 to approximately $40,000 by the end of 1981. As a consequence of her improper conduct, Pearson generated for herself and Hutton commissions in excess of $350,000.

27. During all times material hereto, WIB directly purchased and sold all of the stock on behalf of Pyramid through Hutton and other brokers throughout the United States. All of the brokers, including Hutton, directly communicated with WIB. All transactions involving Pyramid's brokerage account were confirmed by telex to WIB from the brokers, including Hutton.

28. During all times material hereto, WIB recorded and matched the trade orders it issued with the telex confirmations generated by the broker, and periodically submitted such trade orders and confirmations to Coopers & Lybrand, who was retained as Pyramid's outside accountant.

29. During all times material hereto, WIB charged Pyramid a 1/4 of 1% fee on the gross sales or purchase price for all of the brokerage transactions WIB handled.

30. During all times material hereto, Duggan personally oversaw the Pyramid account at WIB, and served as the predominant contact between Pyramid and WIB. Duggan provided Pyramid with investment advice, and personally sought out and established all brokerage accounts based upon his assessment of the brokerage firm.

31. For a substantial period of time material hereto, WIB maintained that it had received no telexes or trade confirmation invoices from Pearson or Hutton, for trades and transactions after August 31, 1981.

32. Despite WIB's representations Pyramid subsequently discovered that WIB had, in fact, received ongoing trade confirmations and telexes from Hutton for each of the unauthorized trades conducted by Pearson. Pyramid acquired knowledge of WIB's receipt of confirmations of the improper trades through the production of a WIB confidential securities mail register which Pyramid obtained in the course of litigation against Hutton. Pyramid received a copy of the register in or about May 1986. The confidential securities mail register maintained by WIB, establishes that WIB knowingly allowed the continuation of improper transactions involving Pyramid's account. WIB willfully and wantonly concealed from Pyramid the existence of the confidential securities mail register for a substantial period of time, thereby precluding Pyramid from obtaining knowledge of WIB's involvement in Hutton's improper activity with respect to Pyramid's account.

COUNT ONE

(Breach of Contract)

33. Plaintiff realleges and adopts each of the allegations previously set forth herein.

34. In or about May 1980, Pyramid entered into a contractual relationship with WIB. Pursuant to this relationship WIB provided numerous services to Pyramid,

including, but not limited to, administering Pyramid's accounts with various brokerage houses, issuing checks and making payments on Pyramid's behalf, keeping and maintaining records of Pyramid's trades in various securities, and serving as Pyramid's general agent to supervise the activity in Pyramid's various brokerage accounts. In consideration of WIB's services to Pyramid, WIB received substantial commissions from Pyramid.

35. During all times material hereto, Duggan, as President and Manager of WIB, regularly participated in WIB's administration and supervision of Pyramid's brokerage accounts. Among other things, Duggan located and recommended brokers, negotiated brokerage agreements, authorized payments both by wire and check, verified confirmations of trades, provided advice concerning investment decisions, and oversaw WIB's recordkeeping for each of the Pyramid accounts.

36. In or about June 1980, pursuant to the contractual agreement between WIB and Pyramid, Duggan traveled to Miami, Florida to meet, interview and retain the services of a brokerage house for Pyramid. In addition, pursuant to the contractual agreement with Pyramid, Duggan and other employees of WIB, made and received numerous mailings and wire communications with brokerage houses in the United States.

37. In or about September 1981 through in or about November 1981, WIB repeatedly and knowingly breached, failed to perform, and defaulted on its contractual obligations to Pyramid, thereby causing substantial economic damage, loss and injury to Pyramid. Among other things, WIB failed to follow Pyramid's instructions, failed to notify Pyramid of obvious unauthorized trades, and neglected to undertake reasonable efforts to stop or minimize Pyramid's losses.

38. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and

International Bank, the parent corporation of WIB, has continually exercised substantial control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

39. As a consequence of the foregoing, Pyramid seeks to recover from International Bank, compensatory and consequential damages, together with the costs of this suit and lawful interest.

COUNT TWO

(Breach of Fiduciary Duty)

40. Plaintiff realleges and adopts each of the allegations previously set forth herein.

41. At all times material hereto, a fiduciary relationship existed between Pyramid and WIB. That relationship was founded upon numerous factors, including but not limited to, Pyramid's special trust and confidence in the integrity and fidelity of WIB, Duggan and defendant International Bank.

42. WIB owed to Pyramid a fiduciary duty of care based upon knowledge WIB possessed that Pyramid relied upon: the guidance and advice of WIB as to the selection of investment brokers, the negotiation of brokerage agreements by WIB, the investment of Pyramid's funds by WIB, the issuance of payment orders by WIB, and the administrative oversight by WIB over the accounting of Pyramid's accounts.

43. WIB benefited from the fiduciary arrangement through its receipt of commissions generated from the investment transactions involving Pyramid's accounts.

44. From in or about September 1981 WIB willfully, recklessly and wantonly breached its fiduciary obligations

to Pyramid, thereby causing substantial economic damage, loss and injury to Pyramid.

45. Among other things WIB, in its role as fiduciary, did not properly protect the interests of Pyramid, did not disclose in a timely manner that conversion and "churning" of Pyramid's account by Pearson and Hutton had occurred, destroyed or failed to adequately maintain documents and records belonging to Pyramid, denied the existence of the WIB confidential securities ledger during the time Pyramid attempted to pursue its claims against Pearson and Hutton, and failed to maintain and implement adequate safeguards to insure that no unauthorized trades in Pyramid's accounts would transpire.

46. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and International Bank, the parent corporation of WIB, has continually exercised substantially control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

47. As a consequence of the foregoing, Pyramid seeks to recover from International Bank, compensatory and consequential damages, together with the costs of this suit and lawful interest, and in addition, seeks to recover punitive damages as a consequence of WIB's willful, reckless, and grossly negligent actions.

COUNT THREE

(Negligence)

48. Plaintiff realleges and adopts each of the allegations previously set forth herein.

49. At all times material hereto, WIB owed to Pyramid a duty to act with reasonable care. Such duty arose as a

consequence of the relationship which was established between Pyramid and WIB, in which WIB performed a multitude of fiduciary, banking, investment, and accounting services for Pyramid.

50. From in or about September 1981 WIB breached its duty of care to Pyramid, thereby causing substantial economic damage, loss and injury to Pyramid.

51. Among other things WIB willfully, recklessly and wantonly failed to follow Pyramid's instructions pertaining to transactions involving Pyramid's accounts, failed to notify Pyramid of unauthorized transactions in Pyramid's accounts, failed to take reasonable steps to stop or minimize Pyramid's losses, failed to adequately maintain records establishing the existence of the unauthorized trades, and failed to implement adequate safeguards to insure that Pyramid would not be injured as a consequence of WIB's wrongful acts.

52. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and International Bank, the parent corporation of WIB, has continually exercised substantial control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

53. As a consequence of the foregoing, Pyramid seeks to recover from International Bank compensatory and consequential damages, together with the costs of this suit and lawful interest, and further seeks the recovery of punitive damages as a consequence of WIB's willful, reckless and grossly negligent actions.

COUNT FOUR

(Civil Conspiracy)

54. Plaintiff realleges and adopts each of the allegations previously set forth herein.

55. From in or about September 1981 Duggan, WIB, and Pearson did knowingly and intentionally combine, conspire, confederate, and agree together to perform various acts which caused substantial damage to Pyramid.

56. As part of said conspiracy, Pearson would and did not convert and take by fraud Pyramid's securities, money, and property for her own use and the use of others.

57. It was a further part of said conspiracy that Pearson would mail and cause to be mailed in furtherance of the fraudulent scheme numerous writings in violation of 18 U.S.C. § 1341.

58. It was a further part of said conspiracy that Pearson would wire and cause to be wired in furtherance of the fraudulent scheme numerous wire communications in violation of 18 U.S.C. § 1343.

59. It was a further part of said conspiracy that Pearson, WIB, and Duggan would conceal Pearson's activities from Pyramid.

60. It was a further part of said conspiracy that, while knowing of Pearson's activities, Duggan and WIB would take no steps whatsoever to halt Pearson's unauthorized and fraudulent conversion of Pyramid's property.

61. It was a further part of said conspiracy that Duggan and WIB would, notwithstanding their knowledge of Pearson's fraudulent conversion of Pyramid's property, omit and neglect to notify Pyramid of such conversion, as each of them were required to do by virtue of their relationship with Pyramid.

62. It was a further part of said conspiracy that Duggan and WIB would conceal, cover up and deny knowledge of Pearson's fraudulent activities, in order to promote and carry on said conspiracy, and its objects and unlawful purposes.

63. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and International Bank, the parent corporation of WIB, has continually exercised substantial control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

64. As a consequence of the foregoing, Pyramid seeks to recover from International Bank compensatory and consequential damages, together with the costs of this suit and lawful interest, and further seeks to recover punitive damages as a consequence of WIB's intentional, willful and wanton acts.

COUNT FIVE

(Fraud)

65. Plaintiff realleges and adopts each of the allegations previously set forth herein.

66. At all times material hereto, a fiduciary relationship existed between Pyramid and WIB, as set forth more fully above.

67. From in or about September 1981 WIB had knowledge of the wrongful activities of Pearson with respect to the conversion and "churning" of Pyramid's account, and further had knowledge that such wrongful activities caused and continued to cause substantial damage and loss to Pyramid.

68. Despite said knowledge WIB failed to disclosure to Pyramid information concerning Pearson's wrongful acts, and further fraudulently endeavored to conceal the existence of such wrongful acts from Pyramid.

69. WIB's actions were intended to deceive Pyramid of the existence, nature, scope and extent of the wrongful activities engaged in by Pearson and WIB.

70. From in or about September 1981 and in furtherance of its fraudulent scheme, WIB intended to deceive Pyramid by continually representing to Pyramid that no wrongful activity had occurred with respect to Pyramid's accounts.

71. It was a further part of WIB's fraudulent scheme to destroy or fail to maintain documents and accounting records belonging to Pyramid.

72. It was a further part of WIB's fraudulent scheme to deny the existence of the WIB confidential securities ledger during the time Pyramid was attempting to pursue its claims against Pearson and Hutton.

73. As a consequence of WIB's wrongful actions, Pyramid relied upon WIB's continuing misrepresentations, thereby sustaining substantial economic damage, loss and injury to itself.

74. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and International Bank, the parent corporation of WIB, has continually exercised substantial control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

75. As a consequence of the foregoing, Pyramid seeks to recover from International Bank, compensatory and consequential damages, together with the costs of this suit and lawful interest, and further seeks the recovery of punitive damages as a consequence of WIB's intentional, willful and wanton acts.

COUNT VI

(Violation of the Racketeer Influenced and Corrupt Organizations Statute)

76. Plaintiff realleges and adopts each of the allegations previously set forth herein.

77. From in or about September 1981 Pearson, Hutton, Duggan and WIB, did knowingly and intentionally combine, conspire, confederate and agree together with each other to conduct the affairs of their operations as an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity, and to conceal that fact from Pyramid, in violation of 18 U.S.C. §§ 1962(c)-1962(d).

78. It was part of said conspiracy and unlawful activity that Pearson would and did on numerous occasions convert and take by fraud Pyramid's securities, money and property having a value in excess of $5,000, for her own use and the use of others, all in violation of 18 U.S.C. § 2314.

79. It was a further part of said conspiracy and unlawful activity that Pearson would mail and cause to be mailed in furtherance of the fraudulent scheme, numerous writings, all in violation of 18 U.S.C. § 1341.

80. It was a further part of said conspiracy and unlawful activity that Pearson would wire and cause to be wired in furtherance of the fraudulent scheme, numerous wire communications, all in violation of 18 U.S.C. § 1343.

81. It was a further part of said conspiracy and unlawful activity that Duggan and WIB would conceal Pearson's activities from Pyramid.

82. It was a further part of said conspiracy and unlawful activity that, while knowing of Pearson's activities, Hutton, Duggan and WIB would take no steps to halt Pearson's unauthorized and fraudulent conversion of Pyramid's property.

83. It was a further part of said conspiracy and unlawful activity that Duggan and WIB, notwithstanding their knowledge of Pearson's fraudulent conversion and taking of Pyramid's property, would fail to notify Pyramid of the wrongful conversions, as each of them were required to do by virtue of their relationship with Pyramid.

84. It was a further part of said conspiracy that Duggan and WIB would conceal, cover up and deny knowledge of Pearson's fraudulent activities, in an effort to promote and carry on the said conspiracy, its objects and unlawful purposes.

85. As a consequence of the conduct of the enterprise through a pattern of racketeering behavior, involving the use of the mails, wire communications, and conspiracy, Pyramid sustained substantial economic damage, loss and injury.

86. As set forth more fully above, WIB has been held out to the public as a member of International Bank, and International Bank, the parent corporation of WIB, has continually exercised substantial control over the operations of WIB. Such control and domination by International Bank has rendered WIB a "mere instrumentality" of International Bank, thereby rendering International Bank liable for the wrongful acts of its subsidiary WIB.

87. As a consequence of the foregoing, Pyramid seeks to recover from International Bank, threefold the damages it sustained and costs of suit, including a reasonable attorney's fee, and any other relief the Court deems just and proper.

DAMAGES

88. Plaintiff demands compensatory and punitive damages as a consequence of the wrongful acts and injuries set forth above. As a consequence of said wrongful acts, plaintiff has sustained the following losses for which defendant International Bank is liable:

A. The loss of various securities which plaintiff intended to hold indefinitely, plus dividends and other earnings thereon;

B. The losses and expenses incurred by plaintiff for charges against plaintiff's account as a con-

sequence of the wrongful acts of WIB and its co-conspirators;

C. Incidental accounting, banking and other related expenses and charges incurred by plaintiff as the direct result of WIB's and its co-conspirator's misconduct, and as a consequence of plaintiff's efforts to mitigate its damages once the alleged wrongful acts were discovered;

D. Substantial expense in legal fees plaintiff incurred in pursuit of its claims against Pearson and Hutton. Through the expenditure of these fees, plaintiff first discovered the existence and contents of WIB's confidential securities ledger which contradicts WIB's prior and longstanding representations that it had no knowledge of wrongful activity by Pearson; and

E. Attorney's fees and costs plaintiff has and will incur in pursuit of its claims against International Bank.

89. As a consequence of the injuries and wrongful activity set forth above, plaintiff seeks the following damages:

A. Compensatory damages in excess of $10,000, sufficient to restore plaintiff to its position prior to the unauthorized transactions which gave rise to plaintiff's losses:

B. Threefold the damages plaintiff has sustained and the cost of this suit, including a reasonable attorney's fee, as a consequence of defendant's liability under the Racketeer Influenced and Corrupt Organizations Statute; and

C. Punitive damages equal to 10% of defendant's net worth or $15,000,000 whichever is the greater.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues triable as of right by jury.

JACKSON & CAMPBELL, P.C.

By: /s/ Michael J. McManus
Michael J. McManus (#262832)

By: /s/ Warren Lutz
Warren Lutz (#400374)

1120 20th Street, N.W.
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Washington, D.C. 20036
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Attorneys for Plaintiff
Pyramid Securities Limited

DATED: December 31, 1987